

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By \_\_\_\_\_

1 AMEND House Committee Substitute for Senate Bill No. 364, Page 36, Section 347.048, Line 18,  
2 by inserting after all of said line the following:

3  
4 "381.022. 1. As used in sections 381.011 to 381.412, the following terms mean:

5 (1) "Escrow", written instruments, money or other items deposited by one party with a  
6 depository, escrow agent, or escrowee for delivery to another party upon the performance of a  
7 specified condition or the happening of a certain event;

8 (2) "Qualified depository institution", an institution that is:

9 (a) Organized or, in the case of a United States branch or agency office of a foreign banking  
10 organization, licensed under the laws of the United States or any state and has been granted authority  
11 to operate with fiduciary powers;

12 (b) Regulated, supervised, and examined by federal or state authorities having regulatory  
13 authority over banks and trust companies;

14 (c) Insured by the appropriate federal entity; and

15 (d) Qualified under any additional rules established by the director;

16 (3) "Security" or "security deposit", funds or other property received by the title insurer as  
17 collateral to secure an indemnitor's obligation under an indemnity agreement under which the insurer  
18 is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage  
19 in a title insurance policy for a specific title exception to coverage.

20 2. A title insurer, title agency, or title agent not affiliated with a title agency may operate as  
21 an escrow, security, settlement, or closing agent, provided that all funds deposited with the title  
22 insurer, title agency, or title agent not affiliated with a title agency, pursuant to written instructions in  
23 connection with any escrow, settlement, closing, or security deposit shall be submitted for collection  
24 to or deposited in a separate fiduciary trust account or accounts in a qualified depository institution  
25 no later than the close of the second business day after receipt, in accordance with the following  
26 requirements:

27 (1) The funds regulated under this section shall be the property of the person or persons  
28 entitled to them under the provisions of the escrow, settlement, security deposit, or closing  
29 agreement and shall be segregated for each depository by escrow, settlement, security deposit, or  
30 closing in the records of the title insurer, title agency, or title agent not affiliated with a title agency,  
31 in a manner that permits the funds to be identified on an individual basis and in accordance with the  
32 terms of the individual written instructions or agreements under which the funds were accepted; and

33 (2) The funds shall be applied only in accordance with the terms of the individual written  
34 instructions or agreements under which the funds were accepted.

35 3. It is unlawful for any person to:

36 (1) Commingle personal or any other moneys with escrow funds regulated under this

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1 section;

2 (2) Use such escrow funds to pay or indemnify against debts of the title insurance agent or of  
3 any other person;

4 (3) Use such escrow funds for any purpose other than to fulfill the terms of the individual  
5 written escrow instructions after the necessary conditions of the written escrow instructions have  
6 been met;

7 (4) Disburse any funds held in an escrow account unless the disbursement is made under a  
8 written instruction or agreement specifying under what conditions and to whom such funds may be  
9 disbursed or under an order of a court of competent jurisdiction; or

10 (5) Disburse any funds held in a security deposit account unless the disbursement is made  
11 under a written agreement specifying:

12 (a) What actions the indemnitor shall take to satisfy his or her obligation under the  
13 agreement;

14 (b) The duties of the title insurer, title agency, or title agent not affiliated with a title agency  
15 with respect to disposition of the funds held, including a requirement to maintain evidence of the  
16 disposition of the title exception before any balance may be paid over to the depositing party or his  
17 or her designee; and

18 (c) Any other provisions the director may require by rule or order.

19 4. Notwithstanding the provisions of subsection 3 of this section, any bank credits, bank  
20 services, interest, or similar consideration received on funds deposited in connection with any  
21 escrow, settlement, security deposit, or closing may be retained by the title insurer, title agency, or  
22 title agent not affiliated with a title agency as compensation for administration of the escrow or  
23 security deposit, unless the specific written instructions for the funds or a governing statute provides  
24 otherwise.

25 5. Notwithstanding the provisions of subsection 2 of this section, a title insurer, title agency,  
26 or title agent is not authorized to provide such services as an escrow, security, settlement, or closing  
27 agent in a residential real estate transaction unless as part of the same transaction the title insurer,  
28 title agency, or title agent issues a commitment, binder, or title insurance policy and closing  
29 protection letters have been issued protecting the buyer's, lender's, and the seller's interests, or if a  
30 title insurance policy is not being issued by the title insurer, title agency, or title agent, the title  
31 insurer, the title agency, or title agent has given written notice to the affected person in a title  
32 insurance commitment or on a form approved by rule promulgated by the director that the person's  
33 interest in the closing or settlement is not protected by the title insurer, title agency, or title agent.

34 6. It is unlawful for any title insurer, title agency, or agent to engage in the handling of an  
35 escrow, settlement or closing of a residential real estate transaction unless the escrow handling,  
36 settlement or closing is conducted or performed in contemplation of and in conjunction with the  
37 issuance of a title insurance policy [or] and a closing protection letter, or if a title insurance policy is  
38 not being issued by the title insurer, title agency, or title agent, prior to the receipt of any funds, the  
39 title insurer, title agency, or title agent clearly discloses to the seller, buyer or lender involved in such  
40 escrow, settlement or closing, that no title insurer is providing any protection for closing or  
41 settlement funds received by the title agency or agent.

42 7. A violation of any provision under this section is a level three violation under section  
43 374.049.

44 381.058. 1. No insurer that transacts any class, type, or kind of business other than title  
45 insurance shall be eligible for the issuance or renewal of a license to transact the business of title  
46 insurance in this state nor shall title insurance be transacted, underwritten, or issued by any insurer  
47 transacting or licensed to transact any other class, type, or kind of business.

48 2. A title insurer shall not engage in the business of guaranteeing payment of the principal or

1 the interest of bonds or mortgages.

2 3. (1) Notwithstanding subsection 1 of this section or anything else to the contrary in  
3 sections 381.011 to 381.405, a title insurer is expressly authorized to issue closing or settlement  
4 protection letters (and to collect a fee for such issuance) in all transactions where its title insurance  
5 policies are issued and where its issuing agent or agency is performing settlement services and shall  
6 do so in favor of [and upon request by] the applicable buyer, lender, or seller in [such transaction] all  
7 residential real estate transactions. Such closing or settlement protection letter form shall be filed  
8 with the director under section 381.085 and shall conform to the terms of coverage and form of  
9 instrument as required by rule of the director and shall indemnify a buyer, lender, or seller solely  
10 against losses not to exceed the amount of the settlement funds only because of the following acts of  
11 the title insurer's named issuing title agency or title agent:

12 (a) Acts of theft of settlement funds or fraud with regard to settlement funds; and

13 (b) Failure to comply with written closing instructions by the proposed insured when agreed  
14 to by the title agency or title agent relating to title insurance coverage.

15 (2) The rate for issuance of a closing or settlement protection letter in a residential real estate  
16 transaction indemnifying a lessee or purchaser of an interest in land, a borrower, or a lender secured  
17 by a mortgage, including any other security instrument, of an interest in land shall be filed as a rate  
18 with the director.

19 (3) The rate for issuance of a closing or settlement protection letter in a residential real estate  
20 transaction indemnifying a seller of an interest in land shall be filed as a separate rate with the  
21 director.

22 (4) Such filed rate shall not be excessive or inadequate. The entire rate for the closing or  
23 settlement protection letter shall be retained by the title insurer.

24 (5) Except as provided under this section or section 381.403, a title insurer shall not provide  
25 any other coverage which purports to indemnify against improper acts or omissions of a person with  
26 regard to escrow, settlement, or closing services."; and

27  
28 Further amend said bill by amending the title, enacting clause, and intersectional references  
29 accordingly.